

Notice of Allowability

Application No.

09/331,631

Examiner

Hope A. Robinson

Applicant(s)

MANNERS ET AL.

Art Unit

1656

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 7/29/05.
2. ☒ The allowed claim(s) is/are 1,3,11,12,17-19,30,31,34,36,37,39,40,43,47,49-52 and 54-56.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☒ to Paper No./Mail Date 2/17/05.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 8/9/05.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

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EXAMINER'S AMENDMENT

1. An Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.
2. Authorization of this Examiner's amendment was given in a telephone interview with Mr. Dan Altman on August 16, 2005.
3. The Specification has been amended as follows:
On page 23, line 9 please insert the following: (SEQ ID NOS:31-33) after the sequence "nX-C-X-X-C-X-X-X-X-(10-12)-C-X-X-X-C-X-X-X-C-nX".

EXAMINER'S COMMENTS

4. The amendment filed on July 29, 2005 has been received and entered.
The objections and rejections made have been withdrawn by virtue of applicant filing a response that amended or cancelled claims.
5. Note that claim 34 has been rejoined. The claim is directed to a method of using the product of claim 11, thus within the same scope as the elected invention.
6. Applicant is reminded to file corrected drawings based on the Draft person's review.

REASONS FOR ALLOWANCE

7. The following is an Examiner's statement of reasons for allowance:

The applicant has claimed an isolated or purified protein fragment having antimicrobial activity, wherein said protein fragment is a polypeptide consisting of the sequence, C-3X-CnX-C-3X-C (SEQ ID NO: 38 and 39), wherein n is 11 or 12, X is any amino acid and C is Cysteine (see claim 1 for example). A search of commercial databases did not produce any prior art that suggests or teaches the above claimed invention, because the cysteine spacing required by the claim is not taught by the reference; see for example Spencer et al. (WO91/19801A, December 26, 1991). The Spencer et al. reference discloses a sequence that is longer than the peptide recited in the claim, which recites, closed language. Thus, the claimed invention is novel and nonobvious over the prior art.

8. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance".

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hope A. Robinson whose telephone number is 571-272-0957. The examiner can normally be reached on Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathleen Kerr, can be reached at (571) 272-0931. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hope Robinson, MS

Patent Examiner

HR
8/16/05

Kathleen M. Kerr

KATHLEEN M. KERR, PH.D.
SUPERVISORY PATENT EXAMINER